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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/660,067

09/11/2003

Bart De Laender

40987

6186

38505

7590

02/23/2009

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EXAMINER

WILKENS, JANET MARIE

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/660,067	<b>Applicant(s)</b> LAENDER ET AL.	
	<b>Examiner</b> Janet M. Wilkens	<b>Art Unit</b> 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 64-67, 70, 73, 75, 80-84 and 87-103 is/are pending in the application.
- 4a) Of the above claim(s) 89-95 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 64-67, 70, 73, 75, 80-84, 87, 88 and 96-103 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 64, 70, 73, 75, 80-82, 87, 88, 96, and 100-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faye (French reference 2,679,482) in view of Steinlein et al (4,013,021) and Archuletta et al (6,586,504). Faye teaches a pallet (Fig. 1) comprising: a top support member (cross supports/plates shown in Fig. 1), bottom support members (one member shown in Fig. 1), and a plurality of solid cylindrical/elongated octagon support blocks (see one of each in Fig. 1). Each solid support block comprises a composite material comprising at least one cellulosic material and at least one thermal plastic material (wood and polypropylene or polyethylene; see English abstract plastic making up 20-50% of composite) and has upper and lower surfaces devoid of any openings and flat ends (upper and lower surfaces and longitudinal side surfaces for octagon). Also, fasteners/nails (see abstract) are provided. (Note: the other materials listed in the grouping in claims 75, 87 and 101 being functionally equivalent to the generic wood material.) First, Faye fails to teach curved surfaces between the flat ends. Steinlein teach a pallet with blocks (2) having flat ends and curved

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surfaces there between (see Fig. 4). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the blocks of Faye by making the surfaces curved between the flat ends thereof, such as is taught by Steinlein, for aesthetic purposes, to prevent catching of fork lift tine on the blocks, etc. Second, Faye also fails to teach specific materials, densities/particle diameters for the materials and/or concentrations of materials used in the blocks. Archuletta teaches a composite material made of at least 20 percent wood and plastic. The wood including Juniper and other trees and their parts and plastic including polypropylene or polyethylene(column 4, lines 25-44). The wood particle can be sized less than .05 inches if desired (column 10, lines 47-51) for example. Throughout the patent, different materials, ratios and properties of the plastic/wood composite material are discussed. This demonstrates the known use of testing and experimenting with materials in order to obtain desired/predictable results. Therefore, it would have been an obvious design consideration to one of ordinary skill in the art at the time of the invention to modify the support blocks of Faye by using different materials, different combinations of materials having different densities, particle diameters, concentrations of material, etc, depending on the desired need of the person constructing the pallet, e.g. depending on aesthetic reasons, block strength properties desired/required, the materials readily available, personal preferences, etc. It would also have been an obvious consideration to use different types of cellulosic material and plastics, including polyesters, epoxies and vinylesters or

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wood, linen flax shives, paper fiber, nut shells, bamboo, etc, for the same reasons stated above. (Note: the members in these groups of materials being functional equivalents. Furthermore, many shapes are disclosed by the applicant including octagon, see Fig. 5; the block shapes being considered functional equivalents.)

Claims 65-67, 83, 84 and 97-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faye in view of Steinlein et al and Archuletta as stated above and further in view of British patent (832884). As stated above, Faye teaches the limitations of claims 64 and 82, including top and bottom support members with support blocks in between. For claims 65-67, 83, 84 and 97-99, Faye fails to specifically teach three upper cross supports between at least one top plate and support members and three rows of support blocks corresponding to a respective cross support. The British patent teaches a pallet (Fig. 1) comprised of a top member with top support members and upper cross support members, three sets of support blocks and bottom support members. It would have been obvious to use the specific pallet structure configuration of the British patent, to provide a complete pallet for use with the blocks of Faye.

### ***Response to Arguments***

Applicant's arguments filed June 27, 2008 have been fully considered but they are not persuasive. Namely as stated above, it would have been an obvious consideration to modify the support blocks of Faye by using differently shaped

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blocks (including one with rounds edges), different materials, different combinations of materials having different densities, particle diameters, concentrations of material, etc, depending on the desired need of the person constructing the pallet, e.g. depending on aesthetic reasons, block strength properties desired/required, the materials readily available, personal preferences, etc. First, the reference of Steinlein teaching a pallet with blocks (2) having flats ends and curved surfaces there between (see Fig. 4) and it would have been obvious to modify the blocks of Faye by making the surfaces curved between the flat ends thereof, such as is taught by Steinlein, for aesthetic purposes, to prevent catching of fork lift tine on the blocks, etc. Furthermore, many shapes are disclosed by the applicant including octagon, see Fig. 5; the block shapes being considered functional equivalents. Second, the reference of Archuletta demonstrates the use of wood/plastic material experimentation for obtaining desired/predictable results. Therefore, it also would have been an obvious consideration to use different types of cellulous material and plastics, including polyesters, epoxies and vinylesters or wood, linen flax shives, paper fiber, nut shells, bamboo, etc, to acquire the desired material structures. The members in these groups of materials being considered functional equivalents.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janet M. Wilkens whose telephone number is (571) 272-6869. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Janet M. Wilkens/  
Primary Examiner, Art Unit 3637

Wilkens  
February 15, 2009